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grammatical sense. It seems arbitrary to a degree to refuse effect to the author's meaning when sufficiently expressed, simply because the language used might have been a better expression for another meaning if the author had entertained it.

ARREST OF MISDEMEANANTS. — The case of *Brown* v. *Weaver*, 23 So. Rep. 388 (Miss.), rules that when a deputy sheriff shoots a misdemeanant who is fleeing to escape after arrest he exceeds his authority, and that the sheriff and his bondsmen are liable for the act of the deputy. It is generally admitted to be law that if a misdemeanant flees before arrest an officer may not kill him, even if it is not possible to capture him in any other way; and the court in the principal case see no reason why the power of the officer should be greater after arrest. The life of a human being seems to the court a weightier matter in the scale of public policy than the failure of justice in regard to a petty offender. *Thomas* v. *Kinkead*, 18 S. W. Rep. 854 (Ark.); *Reneau* v. *State*, 31 Amer. Rep. 626 (Tenn.).

The opposite view seems to find its sole exponent in Mr. Bishop, Criminal Procedure, vol. i. § 161, and note. Mr. Bishop's general argument is that it is necessary that the servants of the law have absolute power to enforce its commands. In a polemic note he puts the hypothetical case of a pugilist successfully defying a court because its servants have not the power to kill as a last resort. He relies also on the admitted rule of law that if any man, misdemeanant or felon, resists a legal arrest and is killed in the struggle, the officer is not liable, civilly or criminally. The cases the author cites do not support his contention. Such arguments fail to convince the ordinary mind. Surely the majesty of the law is not greatly lessened when an officer refrains from shooting his prisoner, nor is it probable that there would be any marked change in the general conduct of misdemeanants if they learned that officers had no power to kill them. On the other hand, to put into the hands of an ordinary officer of uncertain discretion a power to kill fleeing and unresisting misdemeanants is to create a very grave and immediate danger.

It seems clear, then, not only that the result which the case reaches is sound, but also that the case is far from the line. The rigid rule that an officer may kill a fleeing felon, though not a misdemeanant, — adequate as it may have been in the old law, — is not satisfactory to-day. Modern ideas of public policy, vague and incapable of definition as they are in this regard, tend to limit the officer's power toward felons as well.

IS A VIEW BY THE JURY PART OF THE TRIAL? — A trial for murder is so laborious and protracted an affair that some courts are inclined to search far for reasons by which to avoid setting aside a trial once held for a mere technical error of procedure. The case of *People* v. *Thorn*, 50 N. E. Rep. 947 (N. Y.), is perhaps an example of this inclination. A murder had been committed under particularly atrocious circumstances. In the course of the trial, the jury were sent to take a view of the premises where the crime was committed. The prisoner at his own special request did not accompany them; but when the verdict of guilty was finally rendered, he raised the objection that he had not been present through the whole trial, and was therefore entitled to be tried again. The